

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 891

Introduced by Senator Liu

January 25, 2010

An act to ~~amend Section 12309 of~~ *add Section 12309.5 to* the Welfare and Institutions Code, relating to In-Home Supportive Services.

LEGISLATIVE COUNSEL'S DIGEST

SB 891, as amended, Liu. In-Home Supportive Services: needs assessment.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their home. Existing law requires the State Department of Social Services to develop a uniform assessment tool to ensure that IHSS services are delivered in all counties in a uniform manner.

Under existing law, personal care services provided to a qualified individual who is eligible for Medi-Cal benefits are a Medi-Cal covered benefit, under the Personal Care Services Program (PCSP).

Under existing law, the department is responsible for procuring and implementing a new Case Management Information and Payroll System (CMIPS) for the IHSS/PCSP program, including specified minimum requirements, to provide case management, payroll, and management information for the program.

Existing law requires counties to use the needs assessment tool to evaluate a recipient's functioning in various activities, as prescribed, and to quantify the recipient's functioning using a five-point scale to rank each function. Under existing law, a recipient is assigned a functional index score, which is a weighted average based on the

recipient's individual rankings, that is used in the assessment of IHSS services.

~~This bill would require the department, commencing January 1, 2011, and every 3 years thereafter, to update the needs assessment tool.~~

This bill would require the department and the State Department of Health Care Services to jointly convene a stakeholder review process, as specified, to obtain information and comments regarding imposition of a tax on payments received by IHSS providers and the potential for increased federal financial participation as a result of these tax revenues, and alternatives to the state's methodology for deriving a functional index score for IHSS consumers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12309.5 is added to the Welfare and
2 Institutions Code, to read:

3 12309.5. (a) The department and the State Department of
4 Health Care Services shall jointly convene a stakeholder review
5 process to obtain information and comments regarding both of
6 the following:

7 (1) The imposition of a tax on payments received by in-home
8 supportive services providers, and the potential for increased
9 federal financial participation as a result of these tax revenues.

10 (2) Alternatives to the state's methodology for deriving a
11 functional index score for in-home supportive services consumers.

12 (b) The stakeholder review process required by this section
13 shall include statewide organizations representing the interests of
14 consumers, family members, service providers, and statewide
15 advocacy organizations, as well as appropriate policy and fiscal
16 staff of the Legislature.

17 ~~SECTION 1. Section 12309 of the Welfare and Institutions~~
18 ~~Code is amended to read:~~

19 ~~12309. (a) In order to ensure that in-home supportive services~~
20 ~~are delivered in all counties in a uniform manner, the department~~
21 ~~shall develop a uniform needs assessment tool. Commencing~~
22 ~~January 1, 2011, and every three years thereafter, the department~~
23 ~~shall update the uniform needs assessment tool.~~

1 ~~(b) (1) Each county shall, in administering this article, use the~~
2 ~~uniform needs assessment tool developed pursuant to subdivision~~
3 ~~(a) in collecting and evaluating information.~~

4 ~~(2) For purposes of paragraph (1), “information” includes, but~~
5 ~~is not limited to, all of the following:~~

6 ~~(A) The recipient’s living environment.~~

7 ~~(B) Alternative resources.~~

8 ~~(C) The recipient’s functional abilities.~~

9 ~~(e) (1) The uniform needs assessment tool developed pursuant~~
10 ~~to subdivision (a) shall evaluate the recipient’s functioning in~~
11 ~~activities of daily living and instrumental activities of daily living.~~

12 ~~(2) The recipient’s functioning shall be quantified, using the~~
13 ~~general hierarchical five-point scale for ranking each function, as~~
14 ~~specified in subdivision (d).~~

15 ~~(d) The recipient’s functioning ranks shall be as follows:~~

16 ~~(1) Rank one. A recipient’s functioning shall be classified as~~
17 ~~rank one if his or her functioning is independent, and he or she is~~
18 ~~able to perform the function without human assistance, although~~
19 ~~the recipient may have difficulty in performing the function, but~~
20 ~~the completion of the function, with or without a device or mobility~~
21 ~~aid, poses no substantial risk to his or her safety.~~

22 ~~(2) Rank two. A recipient’s functioning shall be classified as~~
23 ~~rank two if he or she is able to perform the function, but needs~~
24 ~~verbal assistance, such as reminding, guidance, or encouragement.~~

25 ~~(3) Rank three. A recipient’s functioning shall be classified as~~
26 ~~rank three if he or she can perform the function with some human~~
27 ~~assistance, including, but not limited to, direct physical assistance~~
28 ~~from a provider.~~

29 ~~(4) Rank four. A recipient’s functioning shall be classified as~~
30 ~~rank four if he or she can perform the function, but only with~~
31 ~~substantial human assistance.~~

32 ~~(5) Rank five. A recipient’s functioning shall be classified as~~
33 ~~rank five if he or she cannot perform the function, with or without~~
34 ~~human assistance.~~

35 ~~(e) (1) Notwithstanding any other law, and effective September~~
36 ~~1, 2009, individuals shall be eligible for each domestic or related~~
37 ~~service only if assessed at a rank four or five, as defined in~~
38 ~~subdivision (d), in the activity of daily living relating to that~~
39 ~~service. The activities of daily living that relate to domestic and~~
40 ~~related services are defined in regulations and include housework,~~

1 laundry, shopping and errands, meal preparation, and meal cleanup.
2 The rank for each domestic and related service shall be determined
3 based on an assessment of need for supportive services by the
4 county, in accordance with this section and the hourly task
5 guidelines as defined by Section 12301.2. This paragraph does not
6 apply to individuals meeting one of the conditions specified in
7 paragraph (2).

8 (2) Paragraph (1) shall not apply to individuals authorized to
9 receive either protective supervision pursuant to subdivision (b)
10 of Section 12300 and Section 12301.21 or paramedical services
11 pursuant to Section 12300.1, or to individuals authorized to receive
12 over 120 hours of services per month.

13 (3) To the extent necessary to maintain federal financial
14 participation, the director may waive any or all of the provisions
15 of paragraph (2), after consultation with the State Department of
16 Health Care Services.

17 (f) A recipient shall be assigned a functional index score. The
18 functional index score for a recipient shall be a weighted average
19 based on the individual functional index rankings, as described in
20 subdivision (d), to provide a single measure of a recipient's relative
21 dependence on human assistance for performance of activities of
22 daily living that are used in the assessment of services provided
23 pursuant to this article.

24 (g) (1) Notwithstanding the rulemaking provisions of the
25 Administrative Procedure Act (Chapter 3.5 (commencing with
26 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
27 Code) the department may implement and administer this section
28 through all-county letters or similar instruction from the department
29 until regulations are adopted. The department shall adopt
30 emergency regulations implementing this section no later than July
31 1, 2010. The department may readopt any emergency regulation
32 authorized by this section that is the same as or substantially
33 equivalent to an emergency regulation previously adopted under
34 this section.

35 (2) The initial adoption of emergency regulations implementing
36 this section and one readoption of emergency regulations shall be
37 deemed an emergency and necessary for the immediate
38 preservation of the public peace, health, safety, or general welfare.
39 Initial emergency regulations and the one readoption of emergency
40 regulations authorized by this subdivision shall be exempt from

1 ~~review and approval by the Office of Administrative Law. The~~
2 ~~initial emergency regulations and the one readoption of emergency~~
3 ~~regulations authorized by this subdivision shall be submitted to~~
4 ~~the Office of Administrative Law for filing with the Secretary of~~
5 ~~State and each shall remain in effect for no more than 180 days,~~
6 ~~by which time final regulations may be adopted.~~
7 ~~(h) Subdivisions (e), (f), and (g) shall become operative on~~
8 ~~September 1, 2009.~~

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